



# **INJURED PATIENTS AND FAMILIES COMPENSATION FUND**

Winnebago County Medical Society

April 6, 2006

# INJURED PATIENTS AND FAMILIES COMP. FUND

- The Fund was created by the Legislature in 1975.
- Provides medical malpractice coverage in excess of primary limits
  - Current limits are \$1,000,000/3,000,000
  - Evidence of primary coverage required to be submitted by primary carrier
  - Participation in the Fund is mandatory for physicians, CRNAs, hospitals, Ambulatory Surgery Centers, and corporate entities providing the medical services of physicians and/or CRNAs. As of Dec 31, 2005 – 13,969 Fund participants.

# Governance

- **Control of the Fund is vested with a 13 member Board of Governors. The Commissioner of Insurance is the Chair of the Board. Administrative staff is provided by OCI**
  - **3 Representatives of the Insurance Industry**
  - **1 person appointed by the State Bar Association**
  - **1 person appointed by the WI Academy of Trial Lawyers**
  - **2 persons appointed by the WI Medical Society**
  - **1 person appointed by the WI Hospital Association**
  - **4 Public Members appointed by the Governor**
- **The Board is assisted by various committees**
  - **Legal Committee**
  - **Claims Committee**
  - **Investment/Audit Committee**
  - **Actuarial Committee**
  - **Risk Management Committee**

# Fund Administration

- The Office of the Commissioner of Insurance provides the administrative staff to perform the day to day operations of the Fund.
- Full time in office staff of 7
- Contracts with outside vendors for: Actuarial, Claims Handling, Risk Management and Investment Performance Analysis.

# CLAIMS COMMITTEE

- The Board of Governors has delegated authority to the Claims Committee to oversee issues involving claims
- The Claims Committee makes recommendations to the Board regarding claims handling policy and procedures
- The Claims Committee in turn has delegated the claims handling authority to the contractor (Wausau Insurance). The Contractor performs the day to day monitoring of cases and reports on a quarterly basis to the Committee.

# CLAIMS COMMITTEE CONT.

- The Committee must provide prior authorization for claims settlement on claims in excess of stated limits.
- As of December 31, 2005 there had been a total of 5,227 claims filed in which the Fund was named. 627 were paid totaling \$596,253,376. 4,373 were closed without payment. Resulting in payment being made by the Fund on only 12% of all claims filed in which the Fund was named.

# CLAIM PROCEDURES

- The Fund's counsel answers on behalf of the Fund, and generally will then take a backseat and only monitor the case. In 2004 there were 127 attorney hires and in 2005, 137.
- Cases in which the Fund counsel may take an active role include:
  - Multiple defendants
  - In cases in which the primary carrier has tender their policy limit and the tender has been accepted.
  - Significant issues or special circumstances
    - Issues that may have a far reaching impact to the Fund or where it has been deemed important for the Fund to ensure that the same stance is being taken on a given issue.



# Claims History

- Claims closed over the last three fiscal years

■ Settled with Fund money	28
■ Tried- Defense Verdict	71
■ Tried- Plaintiff Verdict	12
■ Dismissed (Fund)	795
■ Settled within primary	112



# STATUTORY CHALLENGES

- **Constitutionality of the wrongful death cap**
  - **Wrongful death \$350,000 for an adult, \$500,000 for a minor child**
  - **Non-economic versus wrongful death cap and stacking of caps**
  - **Current challenge: Richard Bartholomew v PCF** The state Supreme Court heard oral arguments on this case on April 5, 2006. A decision is expected sometime this summer as to whether or not the court will overturn Maurin. The Maurin case was decided by the court a number of years ago. In that decision the court upheld the wrongful death cap and stated that only one cap applies – no stacking of caps.

# **Statutory Challenges Cont.**

- **Future Medical Account**
  - **Currently awards for future medical expenses in excess of \$100,000 are maintained by the Fund in a segregated account. Payments are made from this account for authorized medical expenditures and interest is credited to the account annually.**

# Court Decisions.

- Haferman – Developmentally Disabled Minors
  - The court decision effectively removed the commonly used statute of limitations on cases involving developmentally disabled minors.
- Lagerstrom - Collateral Source Rule
  - Collateral source can be presented to the jury, but the jury should be informed of potential subrogation rights (Medicare, Medicaid other insurance)
- Phelps Decision – 1<sup>st</sup> Yr Resident
  - The court decision stated that first year residents are not licensed physicians, are not health care providers, and therefore are not subject to Chapter 655 and the caps do not apply. Case has been remanded to the circuit court – issue of “borrowed” employee.

# Court Decisions

- Ferdon Non-Economic Damages Cap
- The Court declared the non-economic damages cap to be unconstitutional.
- Effects to the Fund
  - Financial – Increase outstanding loss reserves by approximately \$173 million
  - Claims Handling – Changes the dynamics of negotiating settlements
  - Claims Activity – Expectations of increased severity and/or frequency.
  - Perception vs Actual

# History of Non-Econ Caps

- In 1985, Chapter 655 was amended to impose a \$1,000,000 cap on non-econ damages which expired in 1991
- In 1995, the non-econ damages cap was reestablished by the legislature at \$350,000 to adjusted annually for inflation.
- In July 2005, the Supreme Court ruled that the cap was unconstitutional.
- A new cap of \$750,000 was signed into law and became effective April 6, 2006. This is in effect only for those claims that arise with an incident on or after April 6, 2006. For all outstanding claims from 1991 to April 6, 2006, there is no cap on noneconomic damages.

# Legislation

- Act 183 (AB 1073) Established the new cap on noneconomic damages at \$750,000 effective April 6, 2006
- AB 1071 – Pending Governor's action. Established a statute of limitation for developmentally disabled minors.
- AB 1072 - Pending Governor's action. Establishes guidance for the use of collateral source information in jury trials
- AB1074 – Pending Governor's action. Reduces contingency fees for plaintiff counsel in med mal cases.
- SB550 – Through Committee, waiting full floor action. Requires future WHCLIP distributions be paid to the original payor.



# **CURRENT STATE OF MEDICAL MALPRACTICE IN WI**

- **Factors which have contributed to a favorable medical malpractice environment include the existence of the PCF, Wisconsin Juries and the pro-active risk management programs and credentialing performed by hospitals and health care organizations.**
- **The enactment of the new cap on non-economic damages.**
- **In addition, one factor that stands out is that WI, as compared to some other states, does not allow for punitive damages in medical malpractice.**



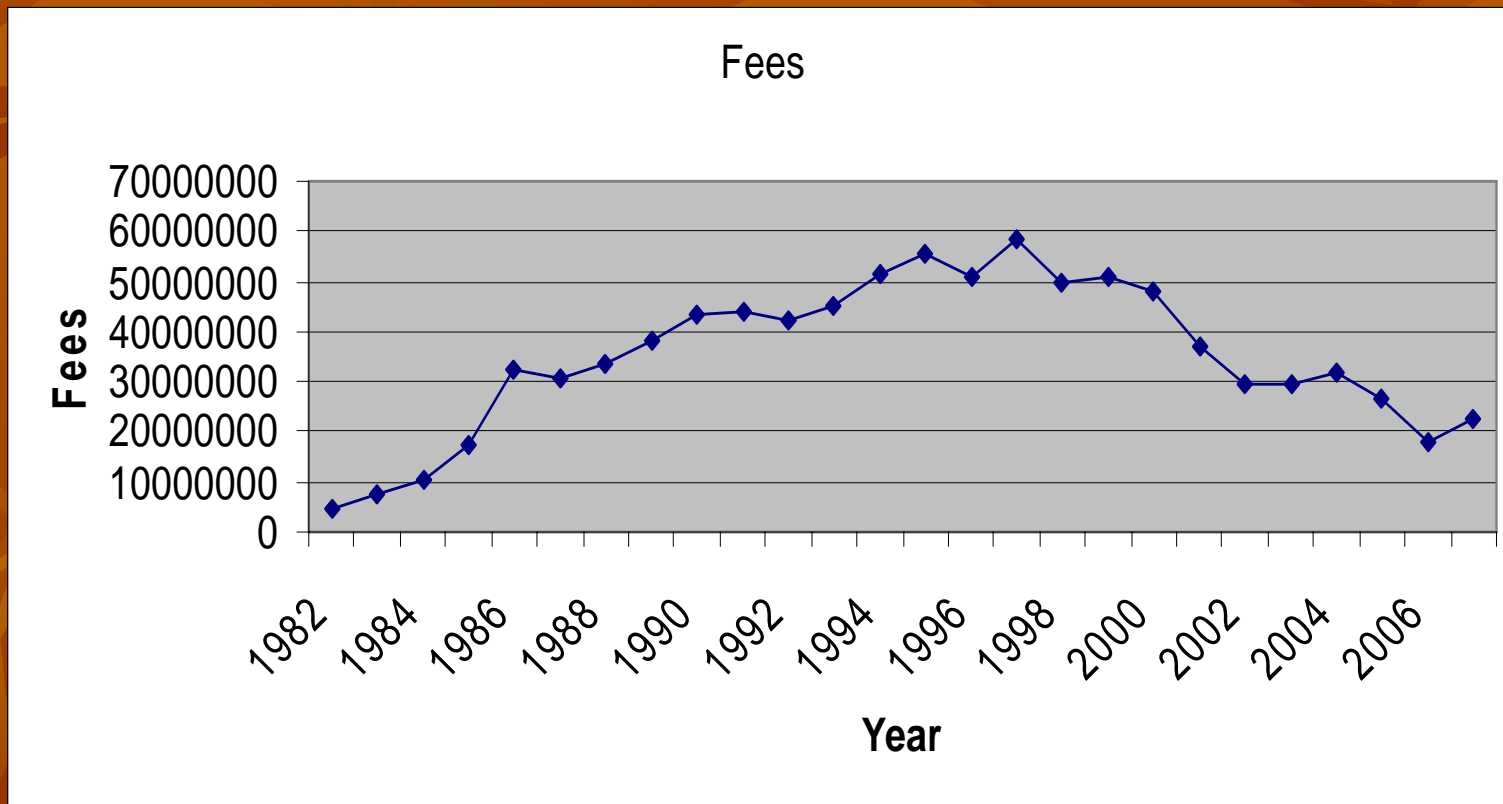
# Fees and Rate Setting

- Fees are established annually by the Board based upon a recommendation from the Actuarial Committee and information provided by the outside actuaries.
- The Board as made a determination that due to the nature of the Fund, it is reasonable to maintain surplus levels at or near zero.

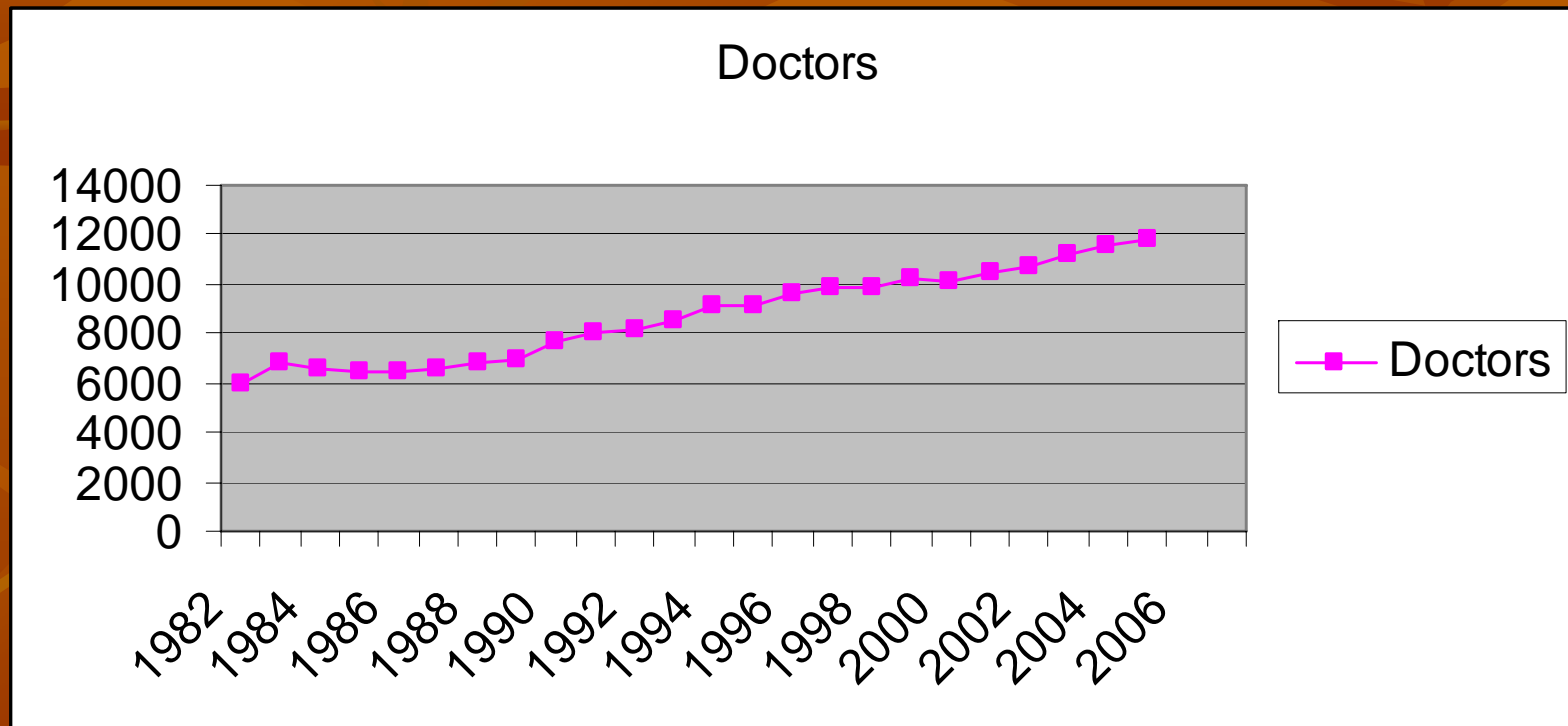
# Historical view of Annual Fees and Participating Doctors

- Pursuant to statute, the Fund assesses participating health care providers an annual fee to cover all costs of the Fund including administrative and claim costs. Historically physicians have accounted for approximately 85% of the total fund participants and have paid approximately 88% of all fees collected. The following charts represent the annual assessments collected and the number of physicians in the fund since 1983. (Earlier data is not included since prior to the early 1980s, fees were collected on a cash basis versus an actuarial basis and inclusion would skew any analysis)

# Annual Fees for the last 26 years; 1982-2007 (proposed)



# Number of Participating Physicians for the last 24 years; 1982-2005



Patients Compensation Fund Fees by Year									
Fiscal Year		Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 9
1976		140	252	433	577	722	866	1155	1155
1977		140	252	433	577	722	866	1155	1155
1978		60	107	184	245	307	368	491	491
1979		58	105	180	239	300	360	480	480
1980		97	175	300	398	500	600	800	800
1981		194	350	600	798	1000	1200	1600	1600
1982		223	403	690	918	1150	1380	1840	1840
1983		381	686	1097	1177	1958	2351	2743	3528
1984		538	968	1549	1662	2765	3319	3874	269
1985		952	1905	2449	2939	4899	5878	6858	10287
1986		1809	3620	4653	5584	9308	11168	13030	19545
		The eight classes were collapsed into four classes beginning fiscal year 1987							
1987		1939	3878	9695	11634				
1988		2094	4188	10470	12564				
1989		2316	4632	11580	13896				
1990		2571	5142	12854	15425				
1991	0.00%	2571	5142	12854	15425				
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1993	4.01%	2674	5348	13370	16044				
1994	9.99%	2941	5882	14705	17646				
1995	7.11%	3150	6300	15750	18900				
1996	-7.21%	2923	5846	12569	17538				
1997	9.99%	3215	6430	13825	19290				
1998	-17.67%	2647	5294	11382	15882				
1999	2.80%	2721	5170	11292	16326				
2000	-6.98%	2531	4809	10504	15186				
2001	-25.01%	1898	3606	7877	11388				
2002	-18.97%	1538	2769	6385	9231				
2003	-5.01%	1461	2630	6063	8766				
2004	5.00%	1534	2761	6366	9204				
2005	-20.01%	1227	2209	5092	7362				
2006	-29.99%	859	1546	3565	5154				
2007	25%	1074	1933	4456	6443				

# THE BOARD AND LOOKING FORWARD

- The Board of Governors takes a very active roll in the Fund; it monitors the medical malpractice environment and is proactive in addressing changes in the practice of medicine. As issues arise, the Board will establish special committees to identify any possible effects to the Fund.
- Since the inception of the Fund, there have been multiple changes affecting the fund, both environmental and legislative. The Board has strived to address these timely and effectively.

# CONTACTING THE FUND

- Internet: <http://oci.wi.gov/pcf.htm>
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